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8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 SAUL ONTIVEROS SOLIS,
EDUARDO GARCIA
15 Defendants.
16

CASE NO. 1:20-CR-00016-DAD-BAM

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
AND ORDER

DATE: December 9, 2020

TIME: 1:00 p.m.

COURT: Hon. Barbara A. McAuliffe

17 This case is set for a status conference on December 9, 2020. As set forth below, the parties now
18 move, by stipulation, to continue the status conference to February 10, 2021, and to exclude the time
19 period between December 9, 2020 and February 10, 2021 under the Speedy Trial Act.
20

21 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the
22 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to
23 continue all criminal matters to a date after June 1. On May 13, 2020, this Court issued General Order
24 618, which suspends all jury trials in the Eastern District of California until further notice. These and
25 previous General Orders were entered to address public health concerns related to COVID-19.

26 Although the General Orders address the district-wide health concern, the Supreme Court has
27 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
28 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
Zedner v. United States, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no

1 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 2 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 3 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 4 or in writing”).

5 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 6 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
 7 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
 8 the ends of justice served by taking such action outweigh the best interest of the public and the
 9 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
 10 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
 11 ends of justice served by the granting of such continuance outweigh the best interests of the public and
 12 the defendant in a speedy trial.” *Id.*

13 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 14 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 15 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 16 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 17 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 18 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 19 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 20 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 21 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

22 In light of the societal context created by the foregoing, this Court should consider the following
 23 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 24 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
 25 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
 26 pretrial continuance must be “specifically limited in time”).

27
 28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendants, by and through defendants' counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for a status hearing on December 9, 2020.

2. By this stipulation, defendant now moves to continue the status conference until February 10, 2021, and to exclude time between December 9, 2020, and February 10, 2021, under Local Code T4.

3. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes investigative reports, photographs, video recordings, audio records, and other investigative documents. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying.

b) As a result of the public health emergency, defense counsel have limited access to their clients. Defense counsel require additional time to convey discovery to their clients, and to consult with and review discovery and other case matters with their clients. Defense counsel require additional time to review discovery with their clients, conduct investigation, and to discuss potential resolution with counsel for the government.

c) The government does not object to the continuance.

d) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of December 9, 2020 to February 10, 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial

1 must commence.

2 IT IS SO STIPULATED.

3
4 Dated: December 4, 2020

5 MCGREGOR W. SCOTT
United States Attorney

6
7 /s/ KATHERINE E. SCHUH
KATHERINE E. SCHUH
8 Assistant United States Attorney

9 Dated: December 4, 2020

10 /s/ VIRNA SANTOS
VIRNA SANTOS
11 Counsel for Defendant
Saul Ontiveros Solis

12 Dated: December 4, 2020

13 /s/ KEVIN P. ROONEY
KEVIN P. ROONEY
14 Counsel for Defendant
Eduardo Garcia

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17 **ORDER**

18 IT IS SO ORDERED that the status conference is continued from December 9, 2020, to **February**
19 **10, 2021, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** Time is excluded pursuant to
20 18 U.S.C. § 3161(h)(7)(A), B(iv).

21 IT IS SO ORDERED.

22 Dated: **December 4, 2020**

23 /s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE